IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revn.No.446 of 1996
Date of Decision: November 21, 2007

Joginder Singh

...Petitioner

Versus

State of Haryana

...Respondent

Crl.Revn.No.439 of 1996
Date of decision: November 21, 2007

Shakti Kumar

…Petitioner

Versus

State of Haryana

…Respondent

CORAM: HON'BLE MR.JUSTICE HARBANS LAL

Present: Mr.SS Dinarpur, Advocate for the petitioner-Joginder Singh

Mr.Veneet Soni, Advocate
Mr. Akshay Bhan, Advocate
for the petitioner-Shakti Kumar

Mr. AK Rathee, Addl.Advocate General, Haryana

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Harbans Lal, J.

This judgment will dispose of Crl.Revn.Nos.446 and 439 of 1996, as these have arisen out of the same judgment dated 28.10.1995/order dated 10.11.1995 rendered by the Court of learned Additional Chief Judicial Magistrate, Jagadhri vide which he convicted and sentenced each of the

accused/petitioners to undergo imprisonment for a period of one year and six months under Section 411 of IPC as well as the judgment dated 5.7.1996 delivered by the Court of learned Additional Sessions Judge, Jagadhri vide which he dismissed the appeal.

The facts are gathered from Criminal Revision No.446 of 1996. These are; Sub Divisional Officer (Operation), Haryana State Electricity Board (for short' the Board'), Mustafabad lodged a report Ex.PA with Station House Officer, Police Station, Chhapper on 11.9.1994 about the theft of Aluminium Coil and laminated core of 63 KVA on the intervening night of 9th and 10th September, 1994 from Village Kanheri Khurd. The price of the stolen coil was about 12320/-. On the basis of above report, the case was registered on 21.9.1994. During investigation, the accused/petitioners along with one Rangi Lal, non-petitioner were arrested. Pursuant to their disclosure statements, they got recovered 20 kgs. of aluminium coil, out of which Joginder Singh accused/petitioner and Rangi Lal got recovered 7 kgs. each, though Shakti Kumar accused/petitioner got recovered 6 kgs. The rough site plan showing the place of occurrence was prepared. After examining the aluminium coil, Bakshi Ram, Assistant Foreman, Mustafabad certified that the same belongs to the Board and is not available in the open market. After completion of investigation, charge-sheet was laid in the Court of Illaqa Magistrate for trial of the accused. The accused/petitioners alongwith Rangi Lal were charged under Section 411 of IPC to which they did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution

examined five witnesses, namely, Mohd. Jaiki, S.D.O. HSEB PW1, Bakshi Ram AFM PW2, Phool Chand HC PW3, Gian Singh ASI PW4 and Des Raj PW5. On close of the prosecution evidence, accused were examined under Section 313 Cr.P.C. They denied all the allegations appearing in the prosecution evidence against them and offered to lead evidence in their defence, but without leading any such evidence, they closed their defence.

After hearing the learned Assistant Public Prosecutor for the State as well as the learned counsel for the accused, the learned trial Court convicted and sentenced the accused/petitioners alongwith Rangi Lal as noticed at the outset. The learned trial court has mentioned in its judgment that "however, accused Rangi Lal is given the benefit of set off for the period already undergone by him during trial". The accused/petitioners feeling aggrieved with the judgment/order dated 28.10.1995/10.11.1995, preferred an appeal, which was dismissed by the learned Additional Sessions Judge, Jagadhri vide his judgment dated 5.7.1996.

Undaunted by the judgments recorded by the Courts below, the accused/petitioners have come up in revisions in this Court.

Mr.Veneet Soni, Advocate counsel for petitioner-Shakti Kumar as well as Mr. S.S.Dinarpur, Advocate counsel for petitioner-Joginder Singh realising that they won't be able to persuade this Court to take a contrary view on the evidence already appreciated by both the Courts below prayed for release of the petitioners on probation. They have not assailed the conviction. Consequently, the same is maintained. This incidence is more than 13 years old. To put it differently, the petitioners have been facing the

agony of trial since pretty long time. The learned Additional Sessions Judge in paragraph 9 of his judgment at page 4 has observed that "I have perused the statement of Bakshi Ram A.F.M. What he examined is scrap. According to Bakshi Ram, property produced before him was burnt aluminium scrap."

In re: **Parmjit Singh vs. State of Punjab**, 2003(3) Recent Criminal Reports (Crl.) 187; stolen property i.e. Seven gold bangles, ear rings, one lady watch, 800 grams of silver ornaments and one scooter were got recovered, in pursuance of the disclosure statement suffered by the accused. The petitioners therein were directed to be released on probation by this Court. The revisions in hand were admitted on 16.7.1996. Since then, the petitioners are on bail. Needless to say, the period exceeding 11 years has gone by. The learned Assistant Advocate General, Haryana has not brought to the notice of this Court that while the petitioners were on bail, they ever misused the same. There is nothing on the record to show that they were involved in the commission of any criminal offence, after grant of concession of bail to them. Keeping in view the facts and circumstances of this case, it would be expedient to give a chance to the petitioners to reform themselves. If they are sent to the prison forthwith, they by coming into the association with the criminals, may turn into hardened criminals. Sequelly, they are directed to be released on probation on furnishing probation bonds in the sum of Rs. 20,000/- each with one surety in the like amount to the satisfaction of the trial Court within two months. However, they shall keep the peace and be of good behaviour

during their probation period of one year. They will come and receive sentence during the said period as and when called upon to do so. In the event of failure to furnish the probation bonds within the aforesaid period, the petitioners shall be called upon by the learned trial Court to serve the remaining portion of their sentence. With the above modification, the Crl.Revn.Nos.446 and 439 of 1996 are disposed of.

November 21, 2007 **(HABANS LAL)**
gsv **JUDGE**